

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7724 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and  
MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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INDRAMOHAN P ARORA

Versus

COMMISSIONER OF INCOME TAX

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Appearance:

MR JP SHAH for Petitioner

MR MANISH R BHATT for Respondent No. 1

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CORAM : MR.JUSTICE S.M.SONI and  
MR.JUSTICE S.D.PANDIT

Date of decision: 20/12/96

ORAL JUDGEMENT

( Per S.D.Pandit, J. )

Rule.

We have heard the learned advocates of both the

sides at length, and, therefore, we proceed to dispose of this petition finally.

2. Shri Indramohan P. Aroda has filed the present petition against the order passed by the respondent under Section 18 B of the Wealth Tax Act, 1957 on 10th September, 1996.

3. The petitioner Indramohan P. Aroda is an incometax payer and he is filing his incometax returns since prior to 1981-82, but he was not filing wealth tax returns till the year 1992. It is his case that as his wealth was invested in industrial undertaking, he was exempted from paying wealth tax and consequently he was not filing the wealth tax returns. It is also his claim that he was under that impression that on account of advise given to him, but he subsequently learnt that that advise given to him was not correct and that he was liable to file wealth tax returns and to pay wealth tax. Therefore, on 27th February, 1991, he filed wealth tax returns for the assessment year 1981-82 to 1987-88. He also deposited the tax due from him as per his return. After he filed the said returns, the department realised that he was not filing the returns, and, therefore, the department issued a notice under Section 17 of the Wealth Tax Act, 1957 bearing the date of 4th April, 1991 and the same was served on him on 14th April, 1991. In pursuance of the said notice, the petitioner informed the department that the returns already filed by him should be treated as the compliance of the said notice. Thereafter, the returns filed by him were assessed by the department and the department found that the returns filed by him were correct and proper. The wealth tax was assessed. Thereafter, he was called upon as to why he should not be imposed to pay the interest as well as penalty. Though the petitioner prayed for not levying penalty against him by taking the matter upto the Income Tax Tribunal, he failed in his endeavour and the department levied penalty as well as interest. The petitioner had paid the interest, but thereafter, he filed an application under Section 18 B of the Wealth Tax Act, 1957 before the Commissioner of Income Tax Act, Baroda, seeking waiver of the penalty. That application of him has been rejected by the Commissioner of Income Tax by his order dated 10th September, 1996, and hence, the petitioner has come before this court.

4. Before considering the claim of the petitioner as well as submissions made by the standing counsel for the department who supported the order in question vehemently, it is necessary to quote here the provisions

of Section 18 B (1) of the Wealth Tax Act, 1957. The said provisions runs as under :

18 B (1) Notwithstanding anything contained in this Act, the Commissioner may, in his discretion, whether on his own motion or otherwise,

(i) reduce or waive the amount of penalty imposed or imposable on a person under clause (i) of sub-section (1) of section 18 for failure without reasonable cause to furnish the return of net wealth which such person was required to furnish under sub-section (1) of section 14 ; or"

(ii) reduce or waive the amount of penalty imposed or imposable on a person under clause (iii) of sub-section (1) of section 18,

if he is satisfied that such person,-

(a) in the case referred to in clause (i),  
has, prior to the issue of a notice to him under sub-section (2) of section 14, voluntarily and in good faith made full and true disclosure of his net wealth, and "

(b) in the case referred to in clause (ii),  
has, prior to the detection by the (Assessing Officer), of the concealment of particulars of assets or of the inaccuracy of particulars furnished in respect of any asset or debt in respect of which the penalty is imposable, voluntarily and in good faith made full and true disclosure of such particulars,

and also has co-operated in any inquiry relating to the assessment of his net wealth and has either paid or made satisfactory arrangements for the payment of any tax or interest payable in consequence of an order passed under this Act in respect of the relevant assesment year,

Explanation-- For the purpose of this sub-section, a person shall be deemed to have made full and true disclosure of the particulars of his assets or debts in any case

where the excess of net wealth assessed over the net wealth returned is of such a nature as not to attract the provisions of clause (c) of sub-section (1) of section 18.

Now if the above provisions of Section 18 B are taken into consideration, then it would be quite clear that a discretion lies with the Commissioner either to reduce or to waive the amount of penalty on 3 grounds :

- (1) If the assessee has disclosed his net wealth by making in good faith true disclosure before the serving of the notice under sub-section 2 of Section 14,
- (2) If the assessee has not conceded any particular of the assets or has not supplied any incorrect particulars while filing the returns and
- (3) that he has cooperated in the inquiry relating to his assessment of his net wealth and has either paid or made satisfactory arrangements for the payment of any tax or interest payable in consequence of an order passed under the Act.

5. Therefore, bearing the above aspect in mind, we proceed to consider the order in question as well as the submissions made before us. If the order of the learned Commissioner of Income Tax is read carefully, then it seems that the learned Commissioner of Income Tax was swayed away by the fact that there was delay in disclosure of his wealth by the present petitioner. It also seems that he was also prejudiced in considering the claim before him on account of the certain observations made by the Income Tax Tribunal while levying the penalty which were also tried to be cited before us by the learned Standing Counsel for the department, in considering the claim before him. If his order is carefully read, then it would be quite clear that there does not seem to be proper discussion of the material before him in order to find out as to whether the petitioner before us was entitled to make the claim before him.

6. It is an admitted fact that the present petitioner had filed his wealth tax returns for the years 1981-82 to 1987-88 on 27th February, 1991, but at the same time, it is also an admitted fact that the petitioner was not served with any notice under sub section 2 of section 14 of the said Act of 1957 before the date he had filed his returns. Thus, it is quite clear that the returns in question were voluntarily filed by the petitioner. It was a voluntary disclosure of his

wealth by the petitioner. It is also an admitted fact that the notice under Section 17 of the said Act of 1957 was issued on 4th April, 1991, and the same was served on him on 14th April, 1991. Therefore, that notice under section 17 is also served on him after he had voluntarily filed his returns. No doubt, the returns filed by him for the year 1981-82 to 1987-88 were filed by him beyond the period of limitation prescribed under the Act for filing the said returns. His failure to file the said returns within the stipulated period has resulted into awarding penalty to him, but the said delay in filing the returns could not be taken into consideration for considering his claim under Section 18 B. It must be remembered that if there was no delay there was no question of levying penalty. Unfortunately, the learned Commissioner has taken into consideration this delay in filing the returns in rejecting his claim. Therefore, that approach of him is obviously perverse. He has to confine himself to the provisions of Section 18 B (1) of the Act in order to consider as to whether the petitioner was entitled to make a claim for waiver by fulfilling conditions laid under the said section and he could not have taken into consideration the delay in lodging or filing the wealth tax returns. Thus, from the above discussion, it would be quite clear that the petitioner before us has fulfilled the first condition which is necessarily to be fulfilled by him for claiming either waiver or reduction in the penalty.

7. It is an admitted fact that the department had not found any fault with the returns filed by the present petitioner. Whatever wealth was disclosed by the petitioner in his return was found to be his wealth liable for the payment of wealth tax. There is no case of department discovering any additional wealth of the petitioner besides the wealth disclosed by petitioner in his returns. At the cost of repetition it must be said that the disclosure of his wealth is voluntary one as he was not served either with the notice under section 14 (2) or Section 17 of the said Act of 1957. When the department had not found any fault with the statements given by the petitioner in his returns and when the department had not found or discovered any additional wealth besides the wealth mentioned by the petitioner in his returns and when the petitioner had voluntarily filed his returns, then it would be quite obvious that there is fulfilment of the second condition required by the said Act.

8. It is not the claim of the department that he was not cooperative when the assessment proceedings were

going on. The petitioner has admittedly paid the tax due from him on his returns. Not only that, he has paid the tax assessed by the department, but he has also paid the interest levied against him for filing the late returns. Therefore, that conduct of him in paying the tax without any hindrance alongwith the interest levied against him makes the fulfilment of the 3rd condition as required by the said Section.

9. Therefore, in view of the above discussion, it would be quite clear that the petitioner before us has fulfilled all the necessary requirements for making a claim of waiver/reduction of the penalty levied against him. The learned advocate for the department vehemently urged before us that the order of the learned Commissioner of Income Tax clear shows that there was delay ranging from 44 months to 116 months in filing the returns. Therefore, in the circumstances, it could not be said that the petitioner is entitled to claim the benefit of the Section 18 B of the said Act of 1957. But we are unable to accept that submission of him in view of the specific provisions of the section as quoted above. If there was no delay on part of the petitioner in filing his returns, there was no question of levying penalty against him. The petition filed by the present petitioner before the Income Tax Commissioner gets birth only after the penalty was levied on account of his filing late returns. The delay in filing the returns gives cause of action for levying penalty and levying of penalty gives cause of action for claiming reduction or waiver of penalty. It must be also stated that because of the delay in filing returns he was saddled with the payment of interest on the wealth tax for the period of delay. He has accordingly paid the same. He is not disputing it. Therefore, the delay in filing the returns has no consideration in considering the claim for waiver or reduction of the penalty levied against the petitioner.

10. It seems from the order of the learned Income Tax Commissioner and it is also vehemently urged by the learned counsel for the department that the expression given by the petitioner for late filing of the return is not correct. In our opinion, for considering the claim in question, it is not at all necessary to go into the question as to whether the petitioner was justified or had reasonable explanation for the late filing of his returns, because if his explanation of late filing was accepted and found to be correct, then it was not open for the department to levy penalty. Because once the department accept the explanation for delay, then the

department would not have been justified in penalising himself even after accepting his delay. Now apart from this, even assuming that while considering the question of waiver or reduction of penalty, the explanation for the delay in filing the returns is to be considered, we are of the opinion that the grounds given by the department in rejecting the said explanation could not be accepted. It is the claim of the petitioner that he was advised that as his wealth was invested in the industrial undertakings, he need not file the wealth tax returns and consequently though he was filing income tax returns for these years 1981-82 to 1987-88, he had not filed the wealth tax returns. The explanation of the petitioner is rejected on the ground that the petitioner has not produced the opinion given by his tax consultant to that effect. In our opinion, a disclosure between an advocate and his client is a privilege disclosure. As it is a privilege disclosure, no authority can compel the party to prove the same. But in the circumstances on record are taken into consideration, then it is not possible to accept the reasoning of the department. There is no dispute of the fact that his wealth was being invested in the industrial undertakings. Under the Act, in case of industrial undertakings, there is certain limit for exemption under the Act. Though the petitioner was filing his income tax returns which must be disclosing his investment in the industrial undertakings, the department itself never thought that he was also liable to file wealth tax returns and to pay wealth tax. Had the department thought so, then definitely a notice would have been issued by the department either under Section 14 (2) or Section 17 prior to his voluntary filing returns on 27-2-1991. It must be also further mentioned here that the petitioner before us has not only filed all his returns for these 7 years, but he has also filed them correctly. This conduct on his part in filing the returns voluntarily and correctly alongwith the above mentioned conduct of the department in not issuing him a notice either under Section 14 (2) or section 17 prior to filing of his returns makes the explanation given by him quite provable, believable and acceptable.

11. Therefore, in view of the above discussion, it would be quite clear that the petitioner's claim under section 18 B for reduction/waiver of penalty was quite correct and proper and the reasons given by the learned Income Tax Commissioner in his order are perverse, and, therefore, we exercise our discretionary powers under Article 226 of the Constitution of India and quash and set aside the order of the learned Income Tax Commissioner.

12. It is urged before us by the learned Standing Counsel Mr. Jani that even if this court happen to come to the conclusion that the petitioner's case is covered by Section 18 B of the Act, the court should not waive the penalty in question and should remand the matter to the Income Tax Commissioner for considering the question as to whether the penalty is to be reduced or waived. He urged before us that such a view was taken by this court in other similar matters previously. But from the order of the Income Tax Commissioner, we are unable to hold that the circumstances of the case are such that the levying of the penalty from the petitioner was justified. At the cost of repetition, it is necessary to mention here that the department had already saddled the present petitioner to pay interest on account of the delay in filing the returns on the tax which was due from him and the petitioner has paid the said amount of interest and he is not disputing the said action of the department. When the petitioner has paid all his tax due alongwith the interest thereon as claimed by the department, we are of the opinion that the circumstances of the case are such that there is no justification for levying penalty. The petitioner had voluntarily filed his returns for 7 years. The returns filed by him were the honest disclosure of his all wealth. The petitioner had fully cooperated with the department during the assessment proceedings. The petitioner has also paid the tax alongwith the interest without any hesitation and the explanation given by him for the delay in filing the returns could not be said to be unbelievable, unacceptable by any prudent man. Therefore, in the circumstances, we are of the opinion that it is not at all necessary to remand the matter to the Income Tax Commissioner to consider the question as to whether there should be waiver or only reduction in the penalty. Though this court might have taken the view in earlier proceeding to remand the matter to the department, that must have been on account of the facts and circumstances of those cases, but in the last case of this court in the case of CHELDAS KHUSHALDAS PATEL AND OTHERS V. COMMISSIONER OF INCOME-TAX, 196 (1992) INCOME TAX REPORTER 200 the Division Bench of this Court had directed the Commissioner in a similar case not only to waive the penalty but the interest also. We would therefore, allow this petition and we hereby direct the Commissioner to waive the penalty imposed on the petitioner in the matter in question for the assessment years 1981-82 to 1987-88. Rule is thus made absolute, but in the circumstances of the case, no orders as to costs.



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